

# Consultant Contract Overview

Local Transportation Funding Symposium

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# Consultant Contract Overview

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# Consultant Contract Overview

## Local Design Solicitation

- ▶ Notice of Interest – NOI (FDM 8-5-20.2)
  - LPA must announce general interest for federal funded design
  - Solicitation Options
    - WisDOT Roster of Eligible Engineering Consultants
    - WisDOT Internet web site
    - Newspaper Advertisement
    - Local Internet web site
    - Established Roster maintained by LPA
    - Sole Source
    - Small Purchase FDM
- ▶ Selection Committee (FDM 8-5-20.3)
  - LPA shall establish a consultant selection committee
    - At least two (2) voting members and chair person
    - Develop objective criteria for selection
    - Evaluate NOI/interviews to develop short list of five (5) firms, minimum



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## Design Selection & WisDOT Approval

- ▶ QBS Process required for federally funded design
  - No Price Proposals (Brooks Bill)
- ▶ All selections require WisDOT approval
  - WisDOT approval required PRIOR to notifying firms
- ▶ Potential firms must be on WisDOT Eligible Roster
- ▶ Non-engineering selections
  - Check with WisDOT for other rosters
- ▶ Roster/Solicitation/Selection Documentation
  - Records must be retained for 3 years from construction completion



## Sole Source (FDM 8-5-5)

- Unique/Emergency/Inadequate response to NOI
- WisDOT approval required



# Consultant Contract Overview

## Local Design Solicitation

- ▶ Local Design Contracts Under \$120,000 (FDM 8-5-10)
  - Small Purchase Procedure
  - Contact minimum of three (3) consultants
  - Identify and DOCUMENT project scope, ranking criteria, and method of contacts
  - Total amended contract amount may NOT exceed \$150,000
- ▶ Local Design Contracts Over \$120,000 (FDM 8-5-20)
  - WisDOT Eligible Roster (Preferred)
    - WisDOT email
  - Local Roster (10 firms minimum)
    - Local Roster must be documented and maintained
    - NOI must be sent to entire local roster
  - Design Contracts estimated over \$1 Million
    - WisDOT part of selection committee
    - Oral interviews with 3-5 firms approved by WisDOT



# Consultant Contract Overview

## Design Contract Negotiations (FDM 8-10-5)

- ▶ Contract Scope & Schedule
  - Jointly developed by LPA, MC, and selected consultant
- ▶ MC & LPA partner during contract negotiations
  - If agreed MC may take lead in negotiations
  - MC access to historical contract data
  - MC & LPA agree to range of contract price based on similar contracts
- ▶ Negotiations should be completed within two (2) meetings
  - Final contract cost offer given to #1 selected firm
  - If agreement is NOT reached, **with WisDOT approval**, terminate negotiations
    - Contact #2 firm after termination of negotiations with #1 firm
    - Final cost offer to firm #2 must not exceed final offer to firm #1
    - Negotiations with firm #1 cannot be reopened once terminated
- ▶ DBE requirements are determined by WisDOT
  - WisDOT assigns DBE participation on project basis
  - DBE requirements part of solicitation process



# Consultant Contract Overview

## Design Contract Amendments (FDM 8-25-15)

- ▶ Amendments are required for ANY MODIFICATION of original contract services
  - Significant change in contract character, scope, complexity, or duration
  - Amendments may not expand scope beyond published solicitation (i.e. Preliminary engineering services may not be expanded to construction engineering services)
- ▶ Amendment procedures follow original Contract procedures
  - Formal scoping may be required
  - Formal negotiations may be required
- ▶ All amendments require WisDOT approval & signature
  - Unauthorized work is not allowed without executed amendment
  - Unauthorized work prior to proper execution not eligible for compensation
  - Work on ANY Contract amendment is prohibited prior to execution
  - Emergency circumstances or sudden unanticipated changes in a project (such as additional subsurface drilling) may be authorized with WisDOT verbal approval. This must be followed up by written amendment procedures
- ▶ Total sum cannot exceed original Contract amount
  - Amendment process time based on WisDOT amendment thresholds (\$50,000)
    - Region threshold <\$50K
    - C.O. threshold >\$50K



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## Contract Claims and Disputes (FDM 8-25-25)

- ▶ Process is included in WisDOT two and three party boilerplates
- ▶ Early notification to impacted consultant & WisDOT required
- ▶ LPA provides documentation and its own representative in process
- ▶ WisDOT reviews facts from both parties
- ▶ Appeals to WisDOT final decision may be filed to State Claims Board by either party in dispute



# Consultant Contract Overview

## Two-Party Design Contracts

- ▶ Two-Party Design Contracts (No Federal Funding)
  - Not required to follow FDM Chapter 8 procedures
  - Design Consultant required to be on WisDOT Eligible Roster
- ▶ Two-Party Municipal Engineering Contracts
  - Funds must be part of SMA
  - LPA must show qualifications to perform design services
  - LPA must submit a cost allocation plan to WisDOT to establish indirect cost rate
  - Profit not allowed
  - Two-Party contracts for oversight of design consultant are not allowed



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## Conflict of Interest

- ▶ Local Consultants on retainer are prohibited from federal design if :
  - Administrative consultant under retainer is involved selection/negotiation of designer
  - Administrative consultant under retainer is involved part of selection committee
  - Consultant under retainer is an employee of firm representing the local in negotiation of contract with his/her own firm
  - Consultant under retainer as the municipal engineer is named as municipal representative in charge of a contract with consultants' firm
  - FDM 8-5-55
- ▶ Consultant considered as designer cannot assist in developing application or scope/cost of future local project
- ▶ Consultant who performs Trans 213 Independent Study (structure rehab report) is prohibited from selection under federal funded design
  - This does not pertain to structure inspections
- ▶ It is permissible to perform structure inspection and compete for the structure design contract
- ▶ Consultant that performs design is not permitted to perform construction engineering services



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## Two-Party Construction Contracts (FDM 8-5-25)

- ▶ Two-Party Construction Engineering Contracts (LET & LFA)
  - WisDOT solicits and selects construction engineering firm
  - MC leads contract scoping and negotiations
  
- ▶ Two-Party Construction Engineering Contracts (LLC)
  - Follow procedures of Sponsor's Guide to Non-Traditional Project Implementation for reimbursement of federally funded construction engineering services
    - In-house or consultant management services
      - Sponsor's Guide procedures
      - Include WisDOT Two-Party Boilerplate



# Question/Answer Period

Thank You For Listening



ID 2806-09-70 CTH C, Racine County

